

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Amazon.com Services, LLC,

Petitioner,

v.

United States Department of Justice,

Respondent,

and

Martin J. Walsh, Secretary of the United States
Department of Labor,

Intervenor.

Case No. 2:22-cv-01815-JCC

**DECLARATION OF MELISSA A.
BAILEY IN SUPPORT OF
PETITIONER'S CROSS MOTION
FOR A PROTECTIVE ORDER
PERTAINING TO OSHA SUBPOENAS**

I, Melissa A. Bailey, declare and state as follows:

1. I am an attorney licensed to practice law in the District of Columbia and the State of Kansas. I am a Shareholder in the Washington D.C. office of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. ("Ogletree") and counsel for Amazon.com Services, LLC ("Amazon"). I submit this Declaration in support of Amazon's Cross Motion for a Protective Order pertaining to OSHA Subpoenas. All of the information contained herein is based on my personal knowledge and experience. If called and sworn as a witness, I could and would competently testify to these facts.

DECLARATION OF MELISSA BAILEY
(CASE NO. 2:22-CV-01815-JCC)

DAVIS WRIGHT TREMAINE LLP
920 Fifth Ave, Suite 3300
Seattle, WA 98104

1 2. I have been practicing law for over 28 years. For the past 25 years, my practice
2 has focused solely on occupational safety and health law. In my decades of practice in this field,
3 I have represented hundreds of clients—including large and small companies across various
4 industries—in OSHA proceedings or similar state agency proceedings. This work includes
5 representing clients in government inspections and investigations – including inspections OSHA
6 has conducted to identify potential ergonomic hazards and recordkeeping violations – as well as
7 agency proceedings, and state and federal court proceedings. I have also represented clients
8 before OSHA in connection with rulemaking and policy formation and have testified before
9 Congress regarding OSHA issues. I am the former Employer Co-Chair of the American Bar
10 Association Occupational Safety and Health Committee.
11

12 3. In this case, OSHA opened inspections at six Amazon facilities. As part of its
13 investigation, OSHA has served more than 525 requests for documents on Amazon, across 8
14 document subpoenas. OSHA’s document requests in this investigation are broad in nature,
15 generally requesting any and all documents that pertain to nearly every aspect of Amazon’s
16 business, including its operations, human resources department, and health and safety
17 organization, at the facility, regional, and national level.
18

19 4. OSHA’s document requests in this investigation also seek a significant number of
20 documents and information that are related not just to the six facilities at which OSHA opened
21 inspections but instead to more than 900 “Sibling Facilities” nationwide. OSHA’s subpoenas
22 define “Sibling Facilities” to include all Amazon facilities of the same type as the inspected
23 facilities, which includes all sortation centers, fulfillment centers, delivery stations, and AMXL
24 fulfillment centers. OSHA’s expansive document requests seek, for example, documents and
25 information regarding injury rates, turnover rates, productivity data and communications, and
26 injuries/incidents reports at these facilities nationwide.
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1 5. In my 25 years of practicing in this area, I have never been involved with or heard
2 about an investigation in which OSHA subpoenaed or otherwise sought such far-ranging
3 documents from facilities outside of those it was inspecting. To the extent that OSHA requests
4 documents outside of the facility level, those requests are typically limited to corporate-wide
5 policies and procedures.
6

7 6. I understand that OSHA is also seeking in this investigation (and has now moved
8 to compel) the expedited review and production of over 233,000 electronically stored documents
9 (“ESI”) from 12 Amazon custodians.

10 7. In my experience, this ESI request is unprecedented. OSHA rarely seeks ESI at
11 all. In my decades of practice in this area, OSHA has sought the review and production of ESI
12 only a handful of times. And, in each of those instances, OSHA most often sought the ESI
13 during discovery in the administrative litigation that commences once OSHA has closed its
14 inspections and issued citations (at that time, any discovery disputes are resolved by the
15 administrative law judge assigned to the case). Moreover, in those few circumstances where
16 OSHA has sought ESI during the administrative litigation, the request for ESI is typically limited
17 to a small subset of readily identifiable emails or messages focused on a particular injury
18 incident or hazard. I have never experienced an OSHA investigation in which the agency sought
19 the large-scale review and production of ESI based on search terms and custodians.
20

21 8. Further, in this investigation OSHA has served 27 subpoenas for sworn testimony
22 from current and former Amazon employees at the facility level, regional level, and national
23 level. OSHA has also requested and completed unsworn interviews with hundreds of non-
24 manager Amazon employees and many managers during the course of its on-site inspections.
25 While sworn testimony is sought by OSHA during some inspections, I have never been involved
26 in an investigation in which OSHA has sought this many sworn statements.
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1 9. I have never been involved with any prior OSHA investigations that are as broad
2 in scope, subject matter, and volume of requests as this investigation. For example, I
3 understand that Amazon has produced over 40,000 documents to OSHA in this investigation.
4 That is more documents than any other that I recall being produced in any other OSHA
5 investigation I have been involved with.
6

7 10. I understand that during the course of this OSHA investigation, Assistant United
8 States Attorneys from the U.S. Attorney's office have taken the lead on nearly all
9 correspondence and meet-and-confer efforts with Amazon, including those related to OSHA's
10 document subpoenas, ESI, and the 5 testimony subpoenas at issue in OSHA's motion. This is
11 also atypical for an OSHA investigation. I have never been involved in any prior OSHA
12 investigation in which OSHA used the U.S. Attorney's office (or any other agency) as its
13 spokesperson/lead.
14

15 11. Amazon has committed a vast amount of attorney time to respond to OSHA's ESI
16 demands. Indeed, approximately 24 attorneys from Ogletree have actively worked on the ESI
17 document review necessary to respond to the subpoenas. As of January 10, 2023, these attorneys
18 have committed over 800 attorney hours to reviewing documents that may be responsive to the
19 broad requests in the subpoena. This work is an addition to the time that Ogletree attorneys have
20 spent representing Amazon during OSHA's physical inspections of the worksites. This attorney
21 team is larger and has dedicated more time to this investigation than any other OSHA
22 investigation that I have been a part of. Moreover, I know that Amazon is also represented by
23 Gibson Dunn & Crutcher LLP and Jackson Lewis, LLP in this matter as well.
24

25 12. Motions to compel filed by OSHA typically seek to enforce subpoenas in
26 circumstances where an employer is refusing to comply with an OSHA subpoena (or portions
27 thereof) altogether. In contrast, here, Amazon has and continues to produce responsive
28

1 documents to OSHA. Amazon simply seeks an appropriate period of time to continue to do so
2 effectively.

3 I declare under penalty of perjury that the foregoing is true and correct.
4

5 Dated: January 18, 2023

6 Washington D.C.

7 By: 

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